(59)

HIGH COURT OF CHHATTISGARH AT BILASPUR
Criminal Appeal No. 62/2004

APPELLANT Sardari Ram and another

VERSUS

RESPONDENT State of Chhattisgarh

Judgment post for 13-12-2007

Sd/-
DHIRENDRA MISHRA
Judge

(60)

17/12/07

HIGH COURT OF CHHATTISGARH AT BILASPUR
Criminal Appeal No. 62/2004

APPELLANTS (IN JAIL)

1. Sardari Ram, Son of Premsai, aged about 35 years,
2. Kushal Ram, S/o Ujit Ram, aged about 20 years

Both are residents of village: Devipur, Police Station : Surajpur, Distt. Surguja (CG)

VERSUS

RESPONDENT State of Chhattisgarh, through Police Station, Surajpur, District Surguja (CG)

PRESENT: Shri V.K. Pandey, Advocate for the appellants.
Smt. Madhunisha Singh, Panel Lawyer, for the State.

JUDGMENT
(13-12-2007)

Dikrendra Mishra, J

This criminal appeal is directed against the judgment of conviction and order of sentence dated 30-12-2003 passed in S.T. No. 314/2002 whereby learned 2nd Additional Sessions Judge (FTC), Surajpur, Surguja has convicted the appellants under Section 376(2)(g), 341, 147, and 323 read with Section 149 of I.P.C. for causing simple injuries Vijay and Dharmjeet and sentenced each of the applicants to undergo R.I. for 10 year with fine of Rs. 1000/-, in default of payment of fine, to further undergo R.I. for two years, to undergo S.I. for one month, R.I. for 6 months and one year (twice), respectively. All the sentences have been directed to run concurrently.

2. Case of the prosecution, in brief, is that the prosecutrix had gone to Devipur in connection with marriage in the family of her aunty Khodiyarin Bai. She was going with Dharmjeet (P.W. 1) and Vijay (P.W. 5) when accused persons and Kapil, Badku and Chhola met them near Gurdu mango tree. Accused Sardari caught her. When Vijay and Dharmjeet stopped them, they started beating them whereupon Vijay and Dharmjeet went towards their houses and accused persons and three others took the prosecutrix towards forest and committed forcible rape with her turn by turn and left her in the morning on way of village Devipur. The prosecutrix narrated the

incident to Bhagmen, Suresh Prasad, Nanka and other villagers and thereafter report was lodged by her in Police Station Surajpur vide Ex. D-4. The prosecutrix was sent for medical examination to Community Health Centre, Surajpur where Dr. (Smt.) Shashi Tirki (P.W. 2) examined her and gave report of Ex. P-1. The accused persons were also sent for medical examination and their report is Ex. P-8, P-13 and Ex. P-18 respectively.

3. After completing investigation, charge sheet was filed against the accused persons in the Court of Additional Chief Judicial Magistrate, Surajpur and the same was received on transfer for trial by learned Additional Sessions Judge, however charge sheet was filed against the other accused persons in the Juvenile Justice Board as they were juvenile at the time of incident.

4. During trial, prosecution examined 18 witnesses in all, thereafter statements of accused persons were recorded in which they denied the evidence appearing against them in prosecution case and pleaded innocence and false implication because of agriculture related dispute. However the trial Court after hearing the counsel for the respective parties, convicted the appellants, however accused Suritram was acquitted of all the charges.

5. Learned counsel for the appellants contended that there are material contradictions and omissions in the statement of the prosecutrix as also the other two witnesses Dharmjeet and Vijay. There are discrepancies and contradictions in their statements with respect to material particulars such as the time of incident, regarding lodging of report, in the place of incident and the place from where the prosecutrix was forcible taken by the accused persons. The prosecutrix is not a witness of truth as she has lodged the report mentioning the name of all the accused persons including the acquitted accused Surit Dhobi however, in her examination-in-chief, she has stated that Surit was not present at the time of incident. She was stranger to the village Devipur and is resident of village Bhelkach about 100 km away from village Devipur. She has also admitted that she cannot tell the name of other villagers except her relatives however no test identification parade was conducted and in absence

of test identification parade, their conviction on the basis of statement of the prosecutrix cannot be sustained. In her examination-in-chief, she has claimed that after taking her meals, she was going to sleep in the house of Vijay at about 6-7 in the night, when she was caught by Sardari near Mundru mango tree and accused persons took her towards forest and kept her through out the night in the forest and left her only at 4.00 a.m. however in cross-examination in paragraphs 22 and 23, she has given a contradictory version that she was present in the marriage house till 1.00 a.m. She has admitted that report was lodged by Vijay, Dharmjeet and Sohagi and she was made to sit in the courtyard of the police station and thereafter she had signed in the report.

6. On the other hand, learned counsel for the State supported the impugned judgment and argued that the prosecutrix specifically stated that the appellants and other accused persons forcibly took her towards forest after beating Dharmjeet and Vijay. Her testimony is duly corroborated from the statements of Dharmjeet and Vijay as also from the statement of Dr. (Smt.) Shashi Tirki (P.W.2) who examined the prosecutrix and found injuries over her person including breast and private parts. P.W. 3 Sohagi and P.W. 4 Chandramani have also corroborated her statement as the prosecutrix narrated them about the incident immediately after she came back from the forest.

7. I have heard learned counsel for the parties. I have perused the record including the impugned judgment.

8. Conviction of the appellants is based on the statements of the prosecutrix and the witnesses Dharmjeet (P.W. 1) and Vijay (P.W. 5). It is also based on the evidence of Dr. Shashi Tirki who examined the prosecutrix. The prosecutrix (P.W. 13) is a resident of village Bhelkach. She had gone to Devipur to attend the marriage of daughter of her aunty from 100 km away from her village Bhelkach. She has other relatives, maternal uncle, Mausa also in the village. She was accompanied by her father and other relatives. Incident occurred on the date of marriage. Barat had already arrived on that day. The prosecutrix does not recognize the accused persons since

before. In the examination-in-chief, she has stated that after taking her meals she was going to the house of Vijay for sleeping along with Vijay and Dharmjeet at approximately 6 to 7 in the night and when she reached near Mudru mango tree, appellant Sardari caught her. Vijay and Dharmjeet objected whereupon appellant Sardari started beating them whereupon they returned home shouting and Sardari took her towards forest. At that time, Sardari, Kushal, Badku and Chhola were also present. Surit was not present. They were 6 in number. Sardari threw her on the ground and committed rape with her after undressing her. Thereafter she became unconscious. When she regained consciousness she saw that some one was raping her. She has named Badku, Chhola, Kapil as the persons who raped her. She has further stated that in the place of incident, Surit was not present. They left her at 4.00 a.m. in the backyard of house of her aunty. At that time, she was not able to walk. She narrated about the incident to Chandramani, Suraj Prasad, brother Birsu and Mausa. She also narrated about the incident to her aunty. She sustained injuries on her back, thighs and breasts. In the cross-examination, she has admitted that she did not name accused Surit in her report nor in her diary statement, however if his name figures in the F.I.R. of Ex. D-4 and her statement Ex. D-5, she does not know the reason. Surit did not commit rape with her. She had told the police that the incident occurred from 12 to 1 in the night. She has admitted that she cannot tell the date and time of the incident. In para 17, she has admitted that she does not know the name of other persons of village Devipur except her own relatives. The relatives who had come with her also participated in the marriage and they were present when Barat arrived. In para 23, she has stated that marriage proceedings commenced in the courtyard at about 12.00 O'clock, before that she and other family members served food to Baratis. In para 26, she has stated that Vijay and Dharmjeet went inside the police station after leaving her in the courtyard and it is true to say that after they lodged the report, her signature was obtained by the inspector and she has also admitted that she disclosed about the incident to her elder uncle and at that time she only disclosed that men folk of the Devipur have done bad things to her after taking her to forest. She does not know as to whom Vijay and Dharmjeet mentioned as

witnesses in the report. The report was lodged against 6 persons. She was laying nearby when the report was lodged. In para 31 she has admitted that she did not know the names of accused persons since before and Vijay told the names of accused persons. In para 39 she has stated that after catching her, she was blind folded and her eyes were opened only at 5.00 in the morning. However on being asked by the Court she has stated that the cloth tied over her eyes was opened at the time of crime. In para 52 she has admitted that when she returned in the morning at 4.00 to village Devipur, Vijay and Dharmjeet etc. had gathered persons and they were saying that Gundas of the village will be sent to jail this time. She has denied the suggestion that on the date of incident, Vijay and Dharmjeet had sex with her and she is falsely implicating the accused persons at their instance. The statement of this witness may be summarized as under:-

i. She did not know the names of the accused persons since before.

ii. She was taken from Mudru mango tree by Sardari towards forest after he had quarrel with Vijay and Dharmjeet.

iii. She accompanied Vijay and Dharmjeet to police station where Vijay and Dharmjeet lodged report and she put her signature.

iv. She named the accused persons after Vijay informed their names.

v. She did not name appellant Kushal as the person who raped her.

9. There are discrepancies in her statement about the time at which she went with Dharmjeet and Vijay for sleeping and the time when she was taken by the accused persons towards forest as at one stage she has stated that she went at about 6 to 7 p.m. and at subsequent stage she has stated that the incident occurred at 12.00 to 1.00 in the night. She has also stated that she was present upto 1.00 in the marriage house.

10. P.W. 1 Dharmjeet has also stated that around 7.00 to 8.00 in the night he returned from marriage programme with Vijay and a girl whose name he does not know and who insisted to accompany them. On way Sardari caught her. He was accompanied by others. He assaulted him with kick on his stomach. Accused also caught Vijay. Both of them were beaten and thereafter they ran towards village and accused persons caught the girl. They narrated about the incident in the marriage house that Sardari and others have taken the girl. They searched for the accused persons in the night. The accused persons came to leave the girl in the morning. He met the prosecutrix in the police station who told him that accused persons had robbed her honour. At the time of incident, accused persons were 6 in number. He recognizes all of them. In the morning, he has admitted that it was a dark night and in the dark night a person at a very small distance is not visible. He has denied the suggestion that accused Surit was not present at Devipur at the time of incident. He has stated that the prosecutrix had told the name of Surit. He has insisted that he does not know the name of the girl and he accompanied the girl to police station from Devipur. In para 18, he has admitted that he, Vijay and father of the prosecutrix had lodged the report in the police station, at that time, the prosecutrix was sitting under the tree out of police station and they were lodging report inside the police station. He has further stated that he had given the names of 7 accused persons and the names were told by the prosecutrix. He has further admitted that there was some quarrel between Sardari and Vijay. In para 27 he has stated that by the time, Baratis took their meal, it was already 12.00. They had also taken meal. The prosecutrix was not present at that time.

11. Vijay (P.W. 5) who accompanied the prosecutrix when she was taken towards forest has stated that after taking meals, Dharmjeet, the prosecutrix and he himself were going to his home for sleeping. At that time, appellants caught him and Dharmjeet and started beating and asked them where they were taking the girl. Other persons were also present with them. However he does not know the name of others. Sardari asked them to go away and then they returned towards village and the appellants and others took the prosecutrix

towards Ghutari. They informed about the incident to Baratis who searched the girl, however she could not be found. In the morning, the prosecutrix came to his house at about 5 to 6 and told him that her honour has been robbed by appellants Sardari, Badkhu, Sifal and Shyampal, Kapil and Surit. At that time she had injuries over her persons. He has stuck to his claim that he saw the incident himself and he did not sleep in the night as he was searching the girl.

12. P.W. 4 Chandramani has also stated that the prosecutrix was missing in the night. On search, she could not be traced and in the morning she learnt that she has returned in the marriage house and she saw that the prosecutrix was injured and she was weeping and the prosecutrix narrated that her honour was robbed. She also named Sardari as the person who raped her. Whereas P.W. 3 Sohagi has stated that on return the prosecutrix told that appellants beat Dharmjeet and Vijay and thereafter other accused persons took her towards forest and all the accused persons including the present appellants robbed her honour.

13. P.W. 2 Dr. Shashi Tirki who examined the prosecutrix and gave the MLC report of Ex. P-1 has stated that on external examination, she found numerous abrasions on her left leg, one bruise on left thigh, numerous abrasions on right leg, right thigh, abrasions on her right leg, numerous abrasions on her right hand, 2-3 abrasions over her left hand, one abrasion on her back. On internal examination, one abrasion on left libia majora of size of 2cm x 1cm, her hymen was ruptured which admitted one finger easily. There was tenderness beneath vagina which was red in color and she has opined that injuries were caused by some blunt object such as bush and nail and all the injuries were simple in nature and were caused within last 24 hours. The injuries present over left libia majora were caused by hard and blunt object which was as a result of intercourse.

14. From the scrutiny of the evidence of the above witnesses it is manifestly clear that the prosecutrix was subjected to rape however the prosecutrix did not know the name of the accused persons and the report was in fact lodged by Dharmjeet and Vijay and she put her signature. There is consistent evidence against accused Sardari that

he caught the prosecutrix in presence of Vijay and Dharmjeet. The prosecutrix as also witness Dharmjeet have named Sardari alone as the person who beat Vijay and Dharmjeet and caught the prosecutrix and took her towards forest. Prosecutrix has also named Sardari as the person who committed rape with her apart from other persons however she has not named the appellant Kushal that he committed rape with her or he caught her and took towards forest. P.W. 5 Vijay has named both the appellants however he has not named the other accused persons who have been duly named by the prosecutrix herself as also P.W. 3 Sohagi; whereas P.W. 4 Chandramani has stated that the prosecutrix told the name of Sardari and others as the accused persons.

15. The incident is of intervening night of 6th and 7th March, 2002. The report was lodged on 7th March, 2002. There is evidence that the report was lodged at the instance of Dharmjeet and Vijay and the prosecutrix only put her thumb impression. The copy of the F.I.R. was forwarded to the concerned Magistrate on 16th March, 2002 vide Ex. D-7. Thus there is delay of 9 days in forwarding the report, therefore, veracity of the F.I.R. is doubtful and possibility of embellishment by adding names of the accused persons subsequently cannot be ruled out. Version of Vijay does not inspire confidence because he is resident of Devipur however he has named only the appellants as the persons who were present when the prosecutrix was taken to the forest whereas Dharmjeet and the Prosecutrix have alleged that Sardari alone beat Vijay and Dharmjeet and took the prosecutrix towards forest and further that he does not name other accused persons whose names find place in the F.I.R. The prosecutrix has not named appellant Kushal as the person who committed rape with her whereas she has named other accused persons excluding Surit and the appellant Kushal. Thus from the above analysis there is consistent evidence against the appellant Sardari that he caught the prosecutrix, beat and chased away the witnesses Vijay and Dharmjeet and took the prosecutrix to the forest. However considering that the prosecutrix does not allege any overt act to appellant Kushal at the time when Sardari took her except his presence with other accused persons and thereafter also she does not

name him as the person who raped her in the forest, in the considered opinion of this Court he was entitled for benefit of doubt and the trial Court was not justified in convicting the accused Kushal only on the basis of statement of the prosecutrix that he was present at the time of incident, in absence of any allegation of his participation in the crime.

16. It is true that there are discrepancies about the time of the incident. The prosecutrix has stated that they were returning to the house of Vijay at 6 to 7 p.m., however subsequently she has stated that the time of incident is between 12 to 1.00 and therefore, considering the totality of the circumstances that the prosecutrix is an illiterate girl and that she underwent severe agony throughout the night as she was ravished by 6-7 persons in the night and that she sustained various injuries in the process as proved by the doctor, the discrepancy regarding the time in itself is not sufficient to impeach her credibility and her testimony can not be discarded in totality. Thus considering the evidence of the prosecutrix which is duly corroborated from the statement of Dharmjeet, Vijay, Chandramani and Sohagi, involvement of appellant Sardari in the crime in question is established beyond reasonable doubt.

17. In the result, the appeal of the appellant Sardari being devoid of substance is liable to be dismissed and is dismissed.

18. However, the appeal preferred by the appellant Kushal is allowed. His conviction under Section 376(2)(g), 341, 147, 323 read with Section 149 of I.P.C. and sentences imposed under those sections are set aside. He be set at liberty forthwith if not required in any other case.

Sd/-
DHIRENDRA MISHRA
Judge